

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Petition by Midwest Wireless Iowa, L.L.C.)	
For Commission Agreement in Redefining)	
The Service Areas of Rural Telephone)	
Companies in the State of Iowa Pursuant)	
To 47 C.F.R. Section 54.207(c))	

**PETITION FOR COMMISSION AGREEMENT IN REDEFINING THE
SERVICE AREAS OF RURAL TELEPHONE COMPANIES IN IOWA**

David A. LaFuria
Steven M. Chernoff
Lukas Nace Gutierrez & Sachs, Chartered
1650 Tysons Boulevard
Suite 1500
McLean, VA 22102

Attorneys for:
MIDWEST WIRELESS IOWA, L.L.C.

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TABLE OF CONTENTS

I. BACKGROUND.....	1
II. DISCUSSION	3
A. The Requested Redefinition Is Consistent With Federal Universal Service Policy.....	5
B. The Requested Redefinition Satisfies the Three Joint Board Factors Under Section 54.207(c)(1) of the Commission's Rules	9
C. Midwest Will Agree to Assume ETC Obligations Throughout the Remaining Portions of Wire Centers Only Partially Within Its Licensed Service Area, Consistent With the FCC’s “Minimum Geographic Area” Policy	19
III. CONCLUSION	21

Summary

Midwest Wireless Iowa, L.L.C. (“Midwest”) requests the Commission’s concurrence with the redefinition of the service areas of several rural incumbent local exchange carriers (“ILECs”) in Iowa pursuant to the process set forth in Section 54.207(c) of the Commission’s rules. Specifically, redefinition is requested such that each wire center of each affected rural ILEC is reclassified as a separate service area. Commission agreement is necessary in order to give effect to an Iowa Utilities Board (“IUB”) rule stating that a wireless carrier’s ETC service area, including Midwest’s, shall be its FCC-licensed service area.

Midwest provides cellular service throughout most of the state of Iowa, including some of the state’s most rural areas. In August 2002, Midwest was designated by the IUB as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e) of the Act. By granting ETC status to Midwest, the IUB found that the use of federal high-cost support to develop its competitive operations would serve the public interest. Because Midwest’s FCC-licensed service territory does not correlate with rural ILEC service areas, Midwest requested that the IUB redefine the affected rural ILEC service areas so that, with FCC concurrence, Midwest’s designation could take effect with respect to the remainder of its licensed service area.

As the IUB recently noted in comments to the FCC, the IUB has adopted a unique approach to defining service areas for competitive wireless ETCs that is designed for Iowa’s particular circumstances, which are likewise unique. Specifically, because Iowa has a large number of rural ILECs scattered across the state, and more than 20 wireless ETCs have been designated in various, often overlapping areas of the state, the IUB sought to avoid the administrative burdens and redundancies that would result from each wireless ETC seeking redefinition of each affected rural ILEC. Accordingly, instead of issuing redefinition decisions

in connection with individual wireless ETC designations, the IUB promulgated a rule providing that a wireless ETC's "service area" is defined as its FCC-licensed service territory.

The proposed redefinition is warranted under the Commission's competitively neutral universal service policies, and it presents a workable solution to Iowa's unique situation, having a great number of rural ILECs and wireless ETCs. The IUB's rule recognizes the futility of engaging in a separate cream-skimming analysis for numerous wireless ETCs that cover different or overlapping portions of the same rural ILEC study areas. It also acknowledges the built-in protections available in the FCC's disaggregation rules for ILECs concerned about cream-skimming. The redefinition embodied in the IUB's wireless service area rule is the solution Iowa has chosen, and the state commission's decision should be respected.

The IUB's proposed redefinition is well-supported by the record at the state level, and all affected parties were provided ample opportunity to comment on the implications of the rule. Accordingly, Midwest requests that the Commission grant its concurrence expeditiously and allow the redefinition proposed herein to become effective without further action.

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**PETITION FOR COMMISSION AGREEMENT IN REDEFINING THE
SERVICE AREAS OF RURAL TELEPHONE COMPANIES IN IOWA**

Midwest Wireless Iowa, L.L.C. ("Midwest"), hereby submits this Petition seeking the FCC's agreement with the redefinition of the service areas of the rural ILECs listed in Exhibit A so that each of the affected ILECs' wire centers constitutes a separate service area. As set forth below, classifying each individual wire center of the affected ILECs as a separate service area will foster federal and state goals of encouraging competition in the telecommunications marketplace and extending universal service to rural Iowa's consumers.

I. BACKGROUND

Midwest is a wireless telecommunications company providing service throughout large portions of Iowa pursuant to FCC cellular authorizations in Iowa RSA No. 3 - Monroe, Iowa

RSA No. 6 - Iowa, Iowa RSA No. 11 - Hardin, Iowa RSA No.12 - Winneshiek, Iowa RSA No. 13 - Mitchell, Iowa RSA No.14 -Kossuth, Iowa RSA No. 15 - Dickinson, and the northern portion of Iowa RSA No. 16 - Lyon. On July 12, 2002, the IUB designated Midwest as an ETC throughout its licensed service area, except for rural LEC service areas that were only partially covered by the requested ETC service area. In the latter areas, Midwest's designation is conditioned upon redefinition of the relevant service areas. Midwest's request for ETC status was unopposed.

Based on the IUB's latest high-cost certification to USAC, there are 160 rural LECs in Iowa. This is by far the largest number of rural LECs in any state; no other state even comes close, the next highest totals belonging to Wisconsin (89) and Minnesota (85). Many of Iowa's rural LECs are telephone cooperatives serving small communities. Some of them, such as Iowa Telecommunications Services d/b/a Iowa Telecom, have wire centers scattered throughout the state in such a manner that no wireless licensee could hope to cover them all without covering the entire state. At the same time, at least 20 wireless carriers have been designated as competitive ETCs in Iowa. Taken together, their cellular and PCS authorizations cover the entire state. However, due to the large number of rural ILECs, many of the wireless ETCs, including Midwest, were designated in areas that include portions of rural ILEC study areas.

Although Midwest sought to have the IUB redefine only the rural LEC service areas affected by its ETC designation, the IUB took a broader approach. On August 25, 2003, the IUB commenced a rulemaking proceeding to consider a proposal to define "service area" as a wireless ETC's FCC-licensed service territory.¹ On May 24, 2004, the IUB issued an order

¹ See In re: Eligible Telecommunications Carrier Designation for Wireless Carriers [199 IAC 39.2], Docket No. RMU-03-13, Order Commencing Rule Making (issued Aug. 25, 2003) ("Order Commencing Rulemaking")

adopting, *inter alia*, the proposal as a final rule (“Wireless Service Area Rule”). The new rule reads:

In the case of a wireless telecommunications carrier, “service area” means that area where the wireless company has been licensed by the FCC to provide service.²

As a result of the Wireless Service Area Rule, every wireless carrier designated by the IUB, including Midwest, now has an ETC service area defined as its FCC-licensed service territory. For wireless ETCs whose service area covers only a portion of a rural ILEC’s service area, the only remaining step is to obtain FCC concurrence.³

II. DISCUSSION

Pursuant to Section 214(e) of the Communications Act of 1934, as amended (the “Act”), state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as ETCs.⁴ Part of the state’s authority in designating competitive ETCs is the ability to establish the carrier’s service area: “The term ‘service area’ means a geographic area established by a State commission . . . for the purpose of determining universal service obligations and support mechanisms.”⁵ In rural areas, service areas are generally defined as the ILEC’s study area. However, the Act explicitly sets forth a process

² In Re: Eligible Telecommunications Carrier Designation for Wireless Carriers [199 IAC 39 2], Docket No. RMU-03-13, Order Adopting Rule (Issued May 24, 2004) (“Order Adopting Rule”). A copy of the Order Adopting Rule is attached for the Commission’s reference as Exhibit B.

³ In response to the adoption of the Wireless Service Area Rule, Midwest contacted IUB staff to determine whether a wireless ETC must obtain an additional order from the IUB redefining the underlying rural ILEC service areas. Staff has advised Midwest that the Wireless Service Area Rule accomplishes such redefinition, and that no further redefinition by the IUB is needed before a wireless ETC proceeds with obtaining FCC concurrence.

⁴ 47 U.S.C. § 214(e).

⁵ 47 U.S.C. § 214(e)(5).

whereby a competitive ETC may be designated for a service area that differs from that of the ILEC. Specifically, Section 214(e) of the Act provides:

... “service area” means such company’s “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.⁶

The FCC and the Federal-State Joint Board on Universal Service (“Joint Board”) have recognized that a strict rule requiring a competitive ETC to serve an area exactly matching a rural LEC’s study area would preclude competitive carriers that fully satisfy ETC requirements from bringing the benefits of competition to consumers throughout their service territory.⁷ Therefore, the FCC established a streamlined procedure for the FCC and states to act together to redefine rural ILEC service areas.⁸ Using this procedure, the FCC and state commissions have applied the analysis contained in Section 214(e) and concluded that it is necessary and appropriate to redefine the ILEC service areas along wire center boundaries to permit the designation of competitive ETCs in those areas.⁹ This process, as well as the underlying necessity of redefinition, was reaffirmed in the FCC’s *ETC Report and Order* released March 17, 2005.¹⁰

⁶ *Id.*

⁷ See *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and Order, 15 FCC Rcd 9924, 9927 n. 40 (1999) (“*Washington Redefinition Order*”), citing *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 181 (1996) (“*Joint Board Recommended Decision*”).

⁸ See 47 C.F.R. § 54.207(c). See also *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8881 (1997) (“*First Report and Order*”).

⁹ See, e.g., *Public Notice, Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. On Tribal Lands Within the State of Arizona*, DA 01-409 (rel. Feb. 15, 2002) (effective date May 16, 2002); *Washington Redefinition Order, supra*, 15 FCC Rcd at 9927-28.

¹⁰ *Federal-State Joint Board on Universal Service, Report & Order*, 20 FCC Rcd 6371 (2005) (“*ETC Report and Order*”).

The IUB's proposal to permit a wireless ETC to be designated throughout its licensed service area is consistent with FCC rules, the recommendations of the Joint Board, and the competitively neutral universal service policies embedded in the Act. Specifically, redefining the affected rural ILEC service areas so that each wire center is a separate service area will promote competition and the ability of rural consumers to have similar choices among telecommunications services and at rates that are comparable to those available in urban areas.¹¹ The proceedings at the state level provided all affected parties with an opportunity to comment on the proposed redefinition, and the IUB fully considered and addressed cream-skimming concerns as part of its rulemaking. The record at the state level, as well as additional considerations set forth below, demonstrates that the requested redefinition fully comports with federal requirements and provides the FCC with ample justification to concur.

A. The Requested Redefinition Is Consistent With Federal Universal Service Policy.

Congress, in passing the 1996 amendments to the Act, declared its intent to “promote competition and reduce regulation” and to “encourage the rapid deployment of new telecommunications technologies.”¹² As part of its effort to further these pro-competitive goals, Congress enacted new universal service provisions that, for the first time, envision multiple ETCs in the same market.¹³ In furtherance of this statutory mandate, the FCC has adopted the principle that universal service mechanisms be administered in a competitively neutral manner,

¹¹ See 47 U.S.C. § 254(b)(3).

¹² Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble).

¹³ See 47 U.S.C. § 214(e)(2).

meaning that no particular type of carrier or technology should be unfairly advantaged or disadvantaged.¹⁴

Consistent with this policy, the FCC and many state commissions have affirmed that ETC service areas should be defined in a manner that removes obstacles to competitive entry.¹⁵ In 2002, for example, the FCC granted a petition of the Colorado Public Utilities Commission (“CPUC”) for a service area redefinition identical in all material respects to the redefinition proposed in this Petition.¹⁶ In support of redefining CenturyTel’s service area along wire-center boundaries, the CPUC emphasized that “in CenturyTel’s service area, no company could receive a designation as a competitive ETC unless it is able to provide service in 53 separate, non-contiguous wire centers located across the entirety of Colorado . . . [T]his constitutes a significant barrier to entry.”¹⁷ The FCC agreed and, by declining to open a proceeding, allowed the requested redefinition to take effect.¹⁸ The FCC similarly approved a petition by the Washington Utilities and Transportation Commission (“WUTC”) and about 20 rural ILECs for the redefinition of the ILECs’ service areas along wire center boundaries, finding that:

[O]ur concurrence with rural LEC petitioners’ request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly

¹⁴ See *First Report and Order*, *supra*, 12 FCC Rcd at 8801. Competitive neutrality is a “fundamental principle” of the FCC’s universal service policies. *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, CC Docket No. 96-45, DA 03-1169 at ¶ 7 (Tel. Acc. Pol. Div. rel. April 17, 2003). Moreover, competitive neutrality was not among the issues referred by the FCC to the Joint Board. See *Federal-State Joint Board on Universal Service*, FCC 02-307 (rel. Nov. 7, 2002) (“*Referral Order*”).

¹⁵ See, e.g., *First Report and Order*, *supra*, 12 FCC Rcd at 8880-81; Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c) at p. 4 (filed with the FCC Aug. 1, 2002) (“CPUC Petition”).

¹⁶ See CPUC Petition at p. 5 (“Petitioner requests agreement to redefine CenturyTel’s service area to the wire center level”).

¹⁷ CPUC Petition at p. 4.

¹⁸ CenturyTel has petitioned the FCC to reconsider its decision. However, as of this date CenturyTel’s service area redefinition is effective.

concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry by permitting new entrants to provide service in relatively small areas . . . We conclude that this effort to facilitate local competition justifies our concurrence with the proposed service area redefinition.¹⁹

In Washington, several competitive ETCs have been designated in various service areas without any apparent adverse consequences to date. No ILEC in Washington has ever introduced any evidence that they, or consumers, have been harmed by the WUTC's service area redefinition.²⁰

Other state commissions have similarly concluded that redefining rural ILEC service areas along wire center boundaries is fully justified by the pro-competitive goals of the 1996 Act. For example, the Minnesota Public Utilities Commission ("MPUC") approved the proposal by WWC Holding Co., Inc. d/b/a CellularOne to redefine certain rural ILEC service areas to the wire center level.²¹ Addressing the concerns expressed by ILEC commenters, the MPUC concluded that the proposed redefinition would neither harm the affected rural ILECs nor create significant cream-skimming opportunities.²² The FCC agreed, and allowed the proposed

¹⁹ *Washington Redefinition Order*, *supra*, 15 FCC Rcd at 9927-28 (footnotes omitted).

²⁰ Sprint Corp. d/b/a Sprint PCS et al., Docket No. UT-043120 at p. 11 (Wash. Util. & Transp. Commn., Jan. 13, 2005) (stating that the WUTC's designation of multiple competitive ETCs, "if not benefiting customers (which it does), certainly is not failing customers. In the five years since we first designated an additional ETC in areas served by rural telephone companies, the Commission has received only two customer complaints in which the consumers alleged that a *non*-rural, wireline ETC was not providing service. No Rural ILEC has requested an increase in revenue requirements based on need occasioned by competition from wireless or other ETCs. This record supports our practice of not seeking commitments or adding requirements as part of the ETC designation process.")

²¹ WWC Holding Co., Inc. d/b/a CellularOne, MPUC Docket No. P-5695/M-04-226, Order Approving ETC Designation (Minn. PUC, Aug. 19, 2004) (FCC concurrence granted Dec. 28, 2004).

²² *Id.* at p. 9.

redefinition to enter into effect. Similar conclusions were reached by state regulators in Arizona, Colorado, New Mexico, Kansas, Maine, Michigan, North Dakota, Oregon, and West Virginia.²³

As in those cases, the redefinition requested in the instant proceeding will enable Midwest to make the network investments necessary to bring competitive service to people throughout its licensed service areas. Redefinition will therefore benefit Iowa's rural consumers, who will begin to see a variety in pricing packages and service options on par with those available in urban and suburban areas.²⁴ They will see infrastructure investment in areas formerly controlled solely by ILECs, which will bring improved wireless service and important health and safety benefits associated with increased levels of radiofrequency coverage. Redefinition will also remove a major obstacle to competition, consistent with federal telecommunications policy.²⁵

²³ See NPI-Omnipoint Wireless, LLC, Case No. U-13714 (Mich. PSC, Aug. 26, 2003) (FCC concurrence granted Feb. 1, 2005) ("NPI-Omnipoint Order"); Highland Cellular, Inc., Case No. 02-1453-T-PC, Recommended Decision (W.V. PSC Sept. 15, 2003), *aff'd* by Final Order Aug. 27, 2004 (FCC concurrence granted Jan. 24, 2005) ("Highland W.V. Order"); Cellular Mobile Systems of St. Cloud, Docket No. PT6201/M-03-1618 (Minn. PUC, May 16, 2004) (FCC concurrence granted Oct. 7, 2004) ("CMS Minnesota Order"); United States Cellular Corp., Docket 1084 (Oregon PUC, June 24, 2004) (FCC concurrence granted Oct. 11, 2004) ("USCC Oregon Order"); Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000) (FCC concurrence granted May 16 and July 1, 2001) ("SBI Arizona Order"); Smith Bagley, Inc., Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (N.M. Pub. Reg. Comm'n Aug. 14, 2001, adopted by Final Order (Feb. 19, 2002) (FCC concurrence granted June 11, 2002) ("SBI N.M. Order"); RCC Minnesota, Inc., Docket No. 04-RCCT-338-ETC (Kansas Corp. Comm'n, Sept. 30, 2004) (FCC concurrence pending) ("RCC Kansas Order"); RCC Minnesota, Inc. et al., Docket No. 2002-344 (Maine PUC May 13, 2003) (FCC concurrence granted March 17, 2005) ("RCC Maine Order"); Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al., Case No. PU-1226-03-597 et al. (N.D. PSC, Feb. 25, 2004) (FCC concurrence pending) ("Northwest Dakota Order"); In the Matter of the Application of N.E. Colorado Cellular, Inc., to Re-define the Service Area of Eastern Slope Rural Telephone Association, Inc.; Great Plains Communications, Inc.; Plains Cooperative Telephone Association, Inc.; and Sunflower Telephone Co., Inc., Docket No. 02A-444T (ALJ, May 23, 2003), *aff'd* by Colo. PUC Oct. 2, 2003 (FCC concurrence pending) ("Colorado Redefinition Order").

²⁴ See 47 U.S.C. § 254(b)(3).

²⁵ See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (stating that the 1996 Act was designed to create "a pro-competitive, de-regulatory national policy framework" aimed at fostering rapid deployment of telecommunications services to all Americans "by opening *all telecommunications markets* to competition...")(emphasis added).

B. The Requested Redefinition Satisfies the Three Joint Board Factors Under Section 54.207(c)(1) of the Commission's Rules.

A petition to redefine an ILEC's service area must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company."²⁶ In the *Recommended Decision* that laid the foundation for the FCC's *First Report and Order*, the Joint Board enumerated three factors to be considered when reviewing a request to redefine a LEC's service area.²⁷

1. Cream-skimming.

First, the Joint Board expressed concern as to whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost exchanges.²⁸ The IUB's Wireless Service Area Rule, which resulted in the definition of Midwest's ETC service area as its FCC-licensed service area, was developed with full consideration to the cream-skimming issue. On July 20, 2003, then-IUB member Elliott Smith submitted a filing to the FCC advocating, *inter alia*, the use of FCC-licensed boundaries for wireless ETCs' service areas. Specifically, Mr. Smith stated:

In Iowa, defined wireline exchange boundaries have evolved over decades based on the ownership of telecommunications facilities and the location of the customers receiving service. The exchanges are irregular in shape and do not follow county, municipal, or section lines. . . .

In contrast, wireless service areas are set by the [FCC] and are based on county lines. Wireless and wireline service areas do not correspond with each other. Often, wireless service providers cannot cover entire wireline exchanges, let alone study areas, because of the irregular shape of the wireline exchanges and the limitations of county-by-county licensing. This difference in service area is not

²⁶ 47 C.F.R. § 54.207(c)(1).

²⁷ *Joint Board Recommended Decision, supra*.

²⁸ *See Joint Board Recommended Decision*, 12 FCC Rcd at 180.

something the wireless carrier has chosen; rather it is an outcome of the FCC's licensing practices. ***Because it is not the result of the carrier's decision, it does not appear to raise the same concerns related to cream skimming.*** [Emphasis added.]²⁹

The IUB's Order Commencing Rulemaking similarly noted that "the service area differences are the result of FCC licensing requirements and do not appear to present any significant cream-skimming concerns."³⁰

Based on the above, it is clear that the IUB fully considered cream-skimming and properly determined that none would result from its Wireless Service Area Rule. Accordingly, the IUB's proposed redefinition satisfies the requirement under the FCC's rules that a redefinition proposal include the state's analysis under the Joint Board's recommendations, including cream-skimming.³¹

Additional considerations support a finding that cream-skimming will be minimized or eliminated. First, there is no possibility of cream-skimming in Iowa, where at least twenty wireless ETCs combine to cover all ILEC study areas. *Virginia Cellular*³² and *Highland Cellular*³³ stand for the proposition that the FCC is concerned with a rural ILEC having competition throughout its study area, not just in its low-cost areas which, presumably, are the most lucrative portions.³⁴ Should the FCC grant its concurrence with the proposed redefinition

²⁹ A copy of Mr. Smith's submission is attached hereto for the Commission's reference as Exhibit C.

³⁰ Order Commencing Rulemaking at p. 2.

³¹ 47 C.F.R. § 54.207(c)(1)(ii).

³² *Virginia Cellular, LLC*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*").

³³ *Highland Cellular, Inc.*, 19 FCC Rcd 6422 (2004) ("*Highland Cellular*").

³⁴ *See id.* at 6438 ("We believe that requiring a competitive ETC to serve entire communities will make it less likely that the competitor will relinquish its ETC designation at a later date. Because consumers in rural areas tend to have fewer competitive alternatives than consumers in urban areas, such consumers are more vulnerable to carriers relinquishing ETC designation.")

embodied in the IUB's Wireless Service Area Rule, Iowa's rural ILECs will have just that. With more than 20 wireless ETCs in Iowa, there is at least one competitive ETC designated in any given area throughout the entire state of Iowa, meaning that every rural ILEC now faces competition throughout its entire study area. Thus, rural ILECs would have no basis on which to claim that any cream-skimming, or effect of cream-skimming, problem exists for them. Even if it could be shown that a particular wireless ETC can serve only the low-cost portions of a given rural ILEC, cream-skimming concerns are mooted because there exists at least one other wireless ETC that has been designated to serve the remaining portions of the study area.

Second, although cream-skimming is a non-issue where numerous wireless ETCs combine to cover all portions of the affected study areas, Midwest has analyzed the relative population densities of the areas inside and outside its licensed service area pursuant to the test set forth in *Virginia Cellular*. As indicated in the table attached as Exhibit D, Midwest is not proposing to serve only, or even primarily, the more densely populated rural ILEC wire centers.

While in some cases the population density of the wire centers within Midwest's proposed ETC service area is somewhat higher than those outside, the ratio of population density inside to population density outside is sufficiently low that cream skimming is not a danger. Indeed, the highest ratio is 1.40:1, which is well within the range of population density ratios approved in other redefinitions by the FCC. For example, on May 23, 2005, the FCC concurred with a redefinition proposal by the Kansas Corporation Commission that included wire centers with significantly higher population densities than in the remaining portions of the rural ILECs' study areas, including South Central Telephone (1.43:1) and United Telephone Association (1.40:1).³⁵ On February 1, 2005, the FCC concurred with the Michigan Public Utilities

³⁵ See Public Notice, DA 05-464 (rel. Feb. 22, 2005) (effective May 23, 2005).

Commission's proposal to redefine the service areas of several rural ILECs, including Upper Peninsula Telephone Company (1.68:1) and Wolverine Telephone Company (1.39:1).³⁶ On December 28, 2004, the FCC concurred with a redefinition proposal by the Minnesota Public Utilities Commission, which included KMP Telephone Company (1.59:1).³⁷ None of the ILECs mentioned above had disaggregated their support. All of these FCC concurrences were granted after the FCC had employed its population density analysis in *Virginia Cellular* and *Highland Cellular*, and, in the Kansas example, after the FCC had affirmed its population density analysis in the *ETC Report and Order*.

An analysis of each Rural ILEC area is provided below:

- C-M-L Tel Coop of Meridien, Iowa ("C-M-L"). The average population density of the wire centers within Midwest's proposed ETC service area is 9.67 persons per square mile ("psm"). The population density for the C-M-L wire centers outside of Midwest's proposed ETC service area is 9.88 psm. Therefore, under the applicable FCC analytical framework, there is no risk of cream-skimming in C-M-L's service area.
- Ellsworth Tel Coop Association ("Ellsworth"). The average population density of the Ellsworth wire centers Midwest proposes to cover is 11.96 psm, while the population density of the sole wire center outside of Midwest's proposed ETC service area is 19.85. Therefore, under the applicable FCC analytical framework, there is no risk of cream-skimming in Ellsworth's service area.

³⁶ See Public Notice, DA 04-3506 (rel. Nov. 3, 2004) (effective Feb. 1, 2005).

³⁷ See Public Notice, DA 04-3137 (rel. Sept. 29, 2004) (effective Dec. 28, 2004).

- Farmers Mutual Coop Tel Co (“Farmers Mutual Coop”). The average population density of the single Farmers Mutual Coop wire center Midwest proposes to cover is 10.60 psm, while the population density of the wire centers outside of Midwest’s proposed ETC service area is 11.27 psm. Therefore, under the applicable FCC analytical framework, there is no risk of cream-skimming in Farmers Mutual Coop’s service area.
- Farmers Mutual Tel Co (“Farmers Mutual”). The average population density of the Farmers Mutual wire centers Midwest proposes to cover is 48.26 psm, while the average population density of the remaining wire centers in that study area is 34.41 psm. While the average population density is somewhat higher inside the proposed ETC service area than outside, the disparity is not nearly as great as the more than eightfold differential that led the FCC to disapprove the designation of Virginia Cellular in a portion of its requested service area (273 psm inside and 33 psm outside),³⁸ and the inside/outside ratio (1.40:1) is well within the range of prior redefinitions approved by the FCC. Moreover, while there are two relatively high-density wire centers in the portion of Farmers Mutual’s service area Midwest proposes to cover, those wire centers represent only a small percentage of Midwest’s potential subscribers within Farmers Mutual’s study area. In the *Highland Cellular* order, the FCC declined to designate a competitive ETC in Verizon South’s study area where 94% of Highland’s potential customers resided in the highest-density wire centers.³⁹ Here, by contrast, only 58.5% of Midwest’s potential customers in Farmers

³⁸ *Virginia Cellular, supra*, 19 FCC Rcd at 1579-80

³⁹ *See Highland Cellular, supra*, 19 FCC at 6436-37.

Mutual's study area live in the higher-density wire centers within its proposed ETC service area, in contrast to the 94% figure that led to partial denial in the FCC's *Highland Cellular* order. Accordingly, there is no risk of cream-skimming in Farmers Mutual's service area.

- Frontier Communications of Iowa ("Frontier"). The average population density of the Frontier wire centers Midwest proposes to cover is 21.42 psm, while the population density of the wire centers outside of Midwest's proposed ETC service area is 36.12 psm. Therefore, under the applicable FCC analytical framework, there is no risk of cream-skimming in Frontier's service area.
- Heartland Communications Co of Iowa ("Heartland"). The average population density of the Heartland wire centers Midwest proposes to cover is 35.38 psm, while the average population density of the remaining wire centers in that study area is 25.73 psm. While the average population density is somewhat higher inside the proposed ETC service area than outside, the disparity is not nearly as great as the more than eightfold differential that led the FCC to disapprove the designation of Virginia Cellular in a portion of its requested service area (273 psm inside and 33 psm outside),⁴⁰ and the inside/outside ratio (1.38:1) is well within the range of prior redefinitions approved by the FCC. Moreover, while there are two relatively high-density wire centers in the portion of Heartland's service area Midwest proposes to cover, those wire centers represent only 27.5% of Midwest's potential subscribers within Heartland's study area, in contrast to the 94% figure that led to partial denial in

⁴⁰ *Virginia Cellular*, *supra*. 19 FCC Rcd at 1579-80.

the FCC's *Highland Cellular* order. Accordingly, there is no risk of cream-skimming in Heartland's service area.

- Iowa Telecom Services d/b/a Iowa Telecom ("Iowa Telecom"). The average population density of the Iowa Telecom wire centers Midwest proposes to cover is 24.74 psm, while the population density of the wire centers outside of Midwest's proposed ETC service area is 24.02 psm. Although the population density inside is slightly higher than outside, the difference is not so significant as to raise cream-skimming concerns.⁴¹ Therefore, under the applicable FCC analytical framework, there is no risk of cream-skimming in Iowa Telecom's service area.
- Iowa Telecom Services d/b/a Iowa Telecom – North ("Iowa Telecom-North"). The average population density of the Iowa Telecom-North wire centers Midwest proposes to cover is 28.26 psm, while the population density of the wire centers outside of Midwest's proposed ETC service area is 27.58 psm. Although the population density inside is slightly higher than outside, the difference is not so significant as to raise cream-skimming concerns.⁴² Therefore, under the applicable FCC analytical framework, there is no risk of cream-skimming in Iowa Telecom-North's service area.
- Iowa Telecom Services d/b/a Iowa Telecom – Systems ("Iowa Telecom-Systems"). The average population density of the Iowa Telecom-Systems wire centers Midwest

⁴¹ See *id.* at 1579 and n.110 ("The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW's remaining wire centers is approximately 2.18 persons per square mile. . . . Although the average population density of the MGW wire centers which Virginia Cellular proposes to serve is slightly higher than the average population density of MGW's remaining wire centers, the amount of this difference is not significant enough to raise cream skimming concerns ")

⁴² See *id.*

proposes to cover is 43.21 psm, while the average population density of the remaining wire centers in that study area is 31.36 psm. While the average population density is somewhat higher inside the proposed ETC service area than outside, the disparity is not nearly as great as the more than eightfold differential that led the FCC to disapprove the designation of Virginia Cellular in a portion of its requested service area (273 psm inside and 33 psm outside),⁴³ and the inside/outside ratio (1.38:1) is well within the range of prior redefinitions approved by the FCC. Moreover, while there are three relatively high-density wire centers in the portion of Iowa Telecom-Systems' service area Midwest proposes to cover, those wire centers represent only 57.3% of Midwest's potential subscribers within Iowa Telecom-Systems' study area, in contrast to the 94% figure that led to partial denial in the FCC's *Highland Cellular* order. Accordingly, there is no risk of cream-skimming in Iowa Telecom-Systems' service area.

- LaPorte City Tel Co ("LaPorte"). LaPorte's study area is made up of two wire centers. The population density of the LaPorte wire center Midwest proposes to cover is 11.54 psm, while the population density of the wire center outside of Midwest's proposed ETC service area is 34.84 psm. Therefore, under the applicable FCC analytical framework, there is no risk of cream-skimming in LaPorte's service area.
- Minerva Valley Tel Co ("Minerva"). Minerva's study area is made up of two wire centers. The population density of the Minerva wire center Midwest proposes to cover is 11.22 psm, while the population density of the wire center outside of Midwest's proposed ETC service area is 24.26 psm. Therefore, under the applicable

⁴³ *Id.* at 1579-80.

FCC analytical framework, there is no risk of cream-skimming in Minerva's service area.

- Northern Iowa Tel Co ("Northern Iowa"). The average population density of the Northern Iowa wire centers Midwest proposes to cover is 22.17 psm, while the population density of the sole wire center outside of Midwest's proposed ETC service area is 20.04 psm. Although the average population density for areas Midwest's ETC service area is slightly higher than that for the remaining areas, the difference is not so significant as to raise cream-skimming concerns.⁴⁴
- South Slope Coop Tel Co. ("South Slope"). The population density of the South Slope wire center Midwest proposes to cover is 43.36 psm, while the population density of the wire center outside of Midwest's proposed ETC service area is 90.89 psm. Therefore, under the applicable FCC analytical framework, there is no risk of cream-skimming in South Slope's service area.
- West Iowa Tel Co ("West Iowa"). The average population density of the Iowa Telecom-Systems wire centers Midwest proposes to cover is 20.83 psm, while the average population density of the remaining wire centers in that study area is 22.52 psm. Therefore, under the applicable FCC analytical framework, there is no risk of cream-skimming in West Iowa's service area.

In sum, Midwest is not proposing to serve "only the low-cost, high revenue customers in a rural telephone company's study area."⁴⁵ This fact, in conjunction with the availability of disaggregation to the affected ILECs and the fact that all rural ILEC areas in Iowa have at least

⁴⁴ See *id.* at 1579 and n.110.

⁴⁵ See *id.* at 1578.

one competitive ETC, demonstrates that cream-skimming will not result from a grant of this Petition.

2. *Rural Telephone Company Status.*

Second, the Joint Board recommended that the FCC and the States consider the rural carrier's special status under the 1996 Act.⁴⁶ In reviewing Midwest's Petition, the IUB weighed numerous factors in ultimately determining that such designation was in the public interest. Congress mandated this public-interest analysis in order to protect the special status of rural carriers in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.⁴⁷ No action in this proceeding will affect or prejudice any future action the IUB or the FCC may take with respect to any ILEC's status as a rural telephone company, and nothing about service area redefinition will diminish an ILEC's status as such.

3. *Administrative Burden.*

Lastly, the Joint Board recommended that the FCC and the States consider the administrative burden a rural ILEC would face.⁴⁸ In the instant case, Midwest's request to redefine the affected rural ILECs' service areas along wire center boundaries is made solely for ETC designation purposes. Defining the service area in this manner will in no way impact the way the affected rural ILECs calculate their costs, but is solely to enable Midwest to begin receiving high-cost support in those areas in the same manner as the ILECs. Rural ILECs may continue to calculate costs and submit data for purposes of collecting high-cost support in the same manner as they do now.

⁴⁶ See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

⁴⁷ See *id*

Should any of the affected rural ILECs choose to disaggregate support out of concerns about cream-skimming by Midwest or any other carrier, this disaggregation of support will not represent an undue administrative burden. The FCC did not find that any undue burdens would result when it adopted its disaggregation rules in the *Fourteenth Report and Order*; in fact, it concluded that, “as a general matter, support should be disaggregated and targeted below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service”⁴⁹ To the extent those ILECs may find this process burdensome, the benefit of preventing cream-skimming and the importance of promoting competitive neutrality will outweigh any administrative burden involved.

In sum, the proposed redefinition fully satisfies both the Joint Board’s recommendations and the *Virginia Cellular* analysis.

C. Midwest Will Agree to Assume ETC Obligations Throughout the Remaining Portions of Wire Centers Only Partially Within its Licensed Service Area, Consistent With the FCC’s “Minimum Geographic Area” Policy.

In its April 2004 *Highland Cellular* decision, the FCC declared that an entire rural ILEC wire center “is an appropriate minimum geographic area for ETC designation”.⁵⁰ The FCC reiterated this finding in its *ETC Report and Order* earlier this year.⁵¹ The rationale for this policy is that “[a] rural telephone company’s wire center is an appropriate minimum geographic

⁴⁸ See *id*

⁴⁹ *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11302 (2001) (“*Fourteenth Report and Order*”).

⁵⁰ *Highland Cellular*, *supra*, 19 FCC Rcd at 6438.

⁵¹ See *ETC Report and Order*, *supra*, 20 FCC Rcd at 6405

area for ETC designation because rural carrier wire centers typically correspond with county and/or town lines.”⁵²

Because Midwest’s licensed service area tends to follow county lines, there are instances where a rural ILEC’s wire center straddles two counties and therefore is only partially within Midwest’s licensed service area. Thus, while the configuration of some wire centers results in their partial exclusion from Midwest’s licensed service area, it is clear that Midwest is not leaving portions of communities unserved. Moreover, as discussed above, all of the partially covered wire centers have at least one other wireless ETC, removing any risk that consumers will have no competitive ETC in their area should one of them withdraw.

Nonetheless, in order to facilitate a grant that will expedite high-cost support to areas that need it, Midwest has eliminated partial wire centers from consideration. Specifically, the FCC has accepted commitments by carriers to remove partial rural ILEC wire centers either by (1) removing them from the proposed ETC service area; or (2) committing to serve the remaining portions of the wire center through a combination of their own facilities and resale or roaming.⁵³ Because the IUB’s Wireless Service Area Rule does not permit a wireless ETC to have a service area that excludes any portion of its licensed service area without a waiver, the first option is not open to Midwest. Accordingly, Midwest commits to offer service in portions of rural ILEC wire centers beyond its licensed service area through a combination of its own facilities and resale or roaming. These areas are indicated in the “covered” column as “~~partial~~ Y” to reflect the fact that they have been changed from partially to fully covered.

⁵² *Highland Cellular*, *supra*, 19 FCC Rcd at 6438.

⁵³ *See Public Service Cellular*, 20 FCC Rcd 6854, 6857 & n 23 (2005); *Advantage Cellular Systems, Inc.*, 19 FCC Rcd 20985, 20990 & n 65 (2004).

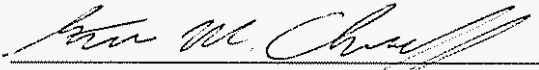
III. CONCLUSION

Midwest stands ready to provide reliable, high-quality telecommunications service to Iowa's rural consumers by investing federal high-cost support in building, maintaining and upgrading wireless infrastructure throughout its licensed service territory, thereby providing facilities-based competition in many of those areas for the very first time. The IUB has found that Midwest's use of high-cost support will increase the availability of additional services and increase investment in rural Iowa and therefore serve the public interest. The IUB has also found that the rule enabling Midwest's designation throughout its FCC-licensed service area does not raise cream-skimming concerns. Yet, without the FCC's concurrence with the redefinition proposed herein, Midwest will not be able to bring those benefits to consumers in many areas in which they are authorized by the FCC to provide service. The redefinition requested in this Petition will enable Midwest's ETC designation to take effect throughout its licensed service territory in Iowa.

The relief proposed herein is substantially the same as that granted by the FCC and state commissions to numerous other carriers throughout the country, and the FCC is well within its authority to grant its prompt concurrence. Midwest submits that the benefits of permitting its ETC designation to take effect throughout its proposed service area are substantial, and those benefits will inure to rural consumers who desire Midwest's service, particularly those consumers who are eligible for Lifeline and Link-Up benefits and currently have no choice of service provider. Accordingly, Midwest requests that the Commission grant its concurrence with

the redefinition of rural ILEC service areas so that each of the wire centers listed in Exhibit A hereto constitutes a separate service area.

Respectfully submitted,


David A. LaFuria
Steven M. Chernoff
Lukas Nace Gutierrez & Sachs, Chartered
1650 Tysons Boulevard
Suite 1500
McLean, VA 22102

Attorneys for:
MIDWEST WIRELESS IOWA, L.L.C.

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